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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 93-36
Tariff Filing Requirements for Nondominant Common Carriers	)	

To: The Commission

OPPOSITION TO AT&T APPLICATION FOR STAY OF ORDER PENDING APPELLATE REVIEW

MCI TELECOMMUNICATIONS CORPORATION

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TABLE OF CONTENTS

SUMMARY

The Commission should deny AT&T's request for a stay, pending judicial review, of the Commission's Order permitting nondominant carriers to file tariffs containing reasonable rate ranges. AT&T has failed to satisfy any of the prerequisites for obtaining the extraordinary relief it is seeking.

First, AT&T has not demonstrated that it is likely to succeed on the merits. The Commission has substantial discretion in interpreting the mandate of its governing statute and its decision is supported by the express language of Section 203 of the Communications Act and by judicial precedent interpreting that provision. The Commission reasonably decided that its authority under Section 203(b) of the Act to modify the tariff-filing requirements of the statute -- which it has done in the case here -- is not as circumscribed as the Interstate Commerce Commission's tariff modification authority, given the differences between the two statutory schemes as acknowledged by the courts.

Second, AT&T clearly will not suffer irreparable injury if nondominant carriers file tariffs containing reasonable ranges of rates. The injury AT&T claims it would suffer is completely unproven, obviously only theoretical, not certain, great and imminent, and the viability of its massive business enterprise obviously would not be

jeopardized in the absence of a stay.

Third, AT&T has failed to demonstrate that no other party would be harmed if the Commission stays its decision. In fact, the Commission found that the costs and burdens of filing new rate schedules for minor tariff revisions are substantial and can be avoided as a result of its decision.

Fourth, AT&T has failed to demonstrate that the public interest would be served by a stay of its decision. Indeed, the Commission found that its action would reduce nondominant carriers' costs and thus allow them to reduce their rates, and would stimulate competition by enabling nondominant carriers to respond immediately to changing marketplace conditions.

For these reasons, the Commission should deny AT&T's stay request.

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OPPOSITION TO AT&T APPLICATION FOR STAY OF ORDER PENDING APPELLATE REVIEW

MCI Telecommunications Corporation (MCI) hereby opposes the American Telephone and Telegraph Co. (AT&T) Application for Stay (Application) of the Commission's Memorandum Opinion and Order in Tariff Filing Requirements for Nondominant Carriers, FCC 93-401, rel. August 18, 1993 (Order). AT&T seeks to stay the Order to the extent it authorizes nondominant carriers to state in their tariffs a reasonable range of rates.[1]

I. INTRODUCTION

In its Order, the Commission decided that substantial public interest benefits would result from permitting nondominant carriers to file tariffs specifying a reasonable range of rates and concluded that its action is authorized by Section 203 of the Communications Act. The Commission reasoned that its decision would not interfere with its ability to ensure that nondominant carriers comply with the nondiscrimination requirements of Section 202(a) of the Act.

After carefully reviewing the record developed in this

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[1] Order at ¶ 32.

proceeding (and, of course, taking into account its past actions in which it unsuccessfully sought to eliminate, rather than merely modify the tariff-filing requirement), the Commission concluded that its action would reduce "the costs and the concomitant administrative burdens normally associated with the preparation and filing of new rate schedules for each minor tariff revision" and that those reduced costs would be reflected in nondominant carriers' rates. The Commission also determined that its action "should promote competition" by "enabling nondominant carriers to respond immediately to changed market conditions." In addition, the Commission found that both consumers and taxpayers "will also likely experience the corresponding benefits to the Commission and carriers in light of the reduced number of tariffs requiring processing."[2]

In the course of reaching these conclusions, the Commission painstakingly reviewed the language and requirements of Section 203 of the Act. It concluded that the statute affords it discretion to specify the manner in which nondominant carriers comply with the requirement of Section 203(a) that carriers shall file "schedules showing such charges for itself . . . [and] the classifications, practices, and regulations affecting charges." 47 U.S.C. § 203(a). The Commission decided that, by specifying a

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[2] Id.

reasonable range of rates, a nondominant carrier would satisfy the rate disclosure requirements of Section 203(a) because the public would be able to determine the range of rates within which charges would be established.[3]

Moreover, the Commission decided that its conclusion is supported by its express authority under Section 203(b) of the Act to modify any of the requirements of Section 203, including those requirements relating to the content of tariffs.[4] Contrary to AT&T's claims (at 6), the Commission's interpretation of the Act would not "defeat the purpose of Section 203" but, instead, would be consistent with that Section and the Act itself. The Act is an organic statute that confers on the Commission expansive powers to adapt its commands to the continually changing telecommunications environment. The Commission's Order thus is a reasonable effort to adapt regulatory requirements to the circumstances confronting nondominant carriers.[5]

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[3] Id. at ¶ 34.

[4] Id. at ¶ 35, citing American Telephone and Telegraph Co. v. FCC, 503 F.2d 612, 617 (2d Cir. 1974)(Enlarged Notice); American Telephone and Telegraph Co. v. FCC, 487 F.2d 864, 879 (2d Cir. 1973)(Special Permission). In this regard, the Commission's action here is not at all inconsistent with the D.C. Circuit cases cited by AT&T (at 9) -- which rejected Commission attempts to eliminate tariff filing requirements -- because those actions were held not to constitute modifications of the tariff filing requirement.

[5] See, e.g., United States v. Southwestern Cable Co., 392 U.S. 157 (1968); National Broadcasting Co. v. United States, 319 U.S. 190 (1943); FCC v. Pottsville Broadcasting Co., 309 U.S. 134 (1940).

The Commission properly rejected the contention that Section 203 confers on it no greater power to modify the tariff content requirements of the statute than that conferred on the Interstate Commerce Commission (ICC) by the Interstate Commerce Act (ICA). As the Commission correctly noted, the courts have concluded that "'the FCC should not be restrict[ed] . . . to a course of action that has been dictated by the requirements of the transportation industry.'"[6] It properly determined that "the fundamental statutory structures of the ICA and the Communications Act differ in significant respects."[7]

In sum, the Commission's decision to authorize nondominant carriers to file tariffs containing reasonable ranges of rates is well grounded in fact and law and reflects a correct reading of its governing statute and the public interest. For the reasons set forth below, AT&T's arguments to the contrary fail to establish its likelihood of prevailing on the merits and also fail to satisfy the other well-established standards for obtaining the extraordinary remedy of a stay.

II. AT&T DOES NOT MEET THE REQUIREMENTS FOR OBTAINING A STAY OF THE COMMISSION'S ORDER

"On a motion for stay, it is the movant's obligation to

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[6] Order at ¶ 36, quoting General Telephone Co. of the Southwest v. U.S., 449 F.2d 846, 856 (5th Cir. 1971); see also Enlarged Notice, 503 F.2d at 616-17.

[7] Order at ¶ 36.

justify the . . . exercise of such an extraordinary remedy." Cuomo v. United States Nuclear Regulatory Com'n, 772 F.2d 972, 978 (D.C. Cir. 1985). Such relief "should be granted only in limited circumstances." Frank's GMC Truck Center, Inc. v. General Motors Corp., 847 F.2d 100, 102 (3d Cir. 1988).

In order to obtain a stay of the Commission's Order, AT&T must show that: (1) it is likely to prevail on the merits of its appeal to the Court;[8] (2) it will suffer irreparable harm absent a stay; (3) others will not be harmed by grant of a stay; and (4) the public interest supports grant of a stay. Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958), modified, Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 844 (D.C. Cir. 1977) ("Holiday Tours"). Each of these prerequisites must be met to support the extraordinary relief of a stay. WWOR-TV, Inc., 6 FCC Rcd 193, 205 (1990), Policy and Rules Concerning Rates for Dominant Carriers, 4 FCC Rcd 5384, 5385 (1989). AT&T has failed to satisfy any of those four "prongs" of the test for a stay.

First, AT&T has not demonstrated that it will succeed on the merits of its appeal in light of the Commission's well-reasoned decision, fully consistent with the language

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[8] AT&T has filed a Petition for Review of the Commission's Order in the U.S. Court of Appeals for the District of Columbia Circuit (No. 93-_____).

of Section 203 and established precedent, that allows for modification of the tariff-filing requirement. Second, AT&T has not demonstrated that it will suffer any harm, much less any harm that would rise to an "irreparable" level, if nondominant carriers continue to set reasonable ranges of rates in their tariffs and its stay request is not granted. Third, AT&T has failed to demonstrate that no other parties will be injured by the grant of a stay. Indeed, nondominant carriers will be injured if a stay is granted because they would be confronted with a tariffing obligation they do not have under the new rule, which has been in effect for three weeks now. Fourth, AT&T did not show, nor could it, that the public interest would be served by a stay of the Order during the pendency of its appeal, given the Commission's findings that considerable public interest benefits will result if nondominant carriers file tariffs stating reasonable ranges of rates. Because AT&T has failed to sustain its substantial burdens on any of the four critical elements, its request must be denied.

A. AT&T Is Not Likely To Prevail On The Merits

In order to obtain a stay, a movant must make "a strong showing that it is likely to prevail on the merits of its appeal [since] [w]ithout such a substantial indication of probable success, there would be no justification for the court's intrusion into the ordinary processes of administration and judicial review." Virginia Petroleum

Jobbers, 259 F.2d at 925.[9] AT&T has failed to make that requisite showing.

AT&T's position is that the Commission lacks the authority under the Communications Act in general, and Section 203 in particular, to permit carriers to file tariffs stating a reasonable range of rates.[10] AT&T contends that the Commission's interpretation of its authority to modify the tariff filing requirements of Section 203 is contrary to the plain language of Section 203, judicial decisions construing the Communications Act, and the similar tariff provisions of the Interstate Commerce Act (ICA).[11]

In fact, the Commission's Order is in no respect "irreconcilable" with Section 203. The Commission is vested with substantial discretion in interpreting its governing

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[9] The Holiday Tours court modified this requirement by holding that, if the other three factors "tip sharply" in favor of the movant, then only a "substantial case on the merits" or demonstration of "an admittedly difficult legal question" need be shown. 559 F.2d at 843-44. Thus, the showing required under the first criterion varies according to the assessment of the other three factors. Enforcement of Prohibitions Against Use of Common Carriers for the Transmission of Obscene Materials, 2 FCC Rcd 3672, 3673 (1987). Although AT&T argues otherwise, the combination of the second through fourth factors weighs strongly against granting the stay and, therefore, AT&T must show probable success on the merits, not merely a "substantial case on the merits."

[10] Application at 6.

[11] Id. at 6-12.

mandate.[12] It has reasonably done so here by determining how tariff schedules required under Section 203 must reflect a carrier's rates. In so doing, the Commission concluded correctly that its action would satisfy the statutory requirements because the "public would be able to discern, by examining the tariff filing, the reasonable zone of rates within which the customers would be charged."[13]

AT&T (at 7) asserts that a tariff specifying a range of rates would not comply with Section 203 because it would not indicate a particular rate which could be chosen by a particular customer and it would be impossible to determine whether any portion of the tariffed rates had been unlawfully rebated. In fact, a range of rates would be as informative to a customer and to the Commission as specific rates and would equally ensure that a nondominant carrier is not rebating any charges.

Depending on features, term, volume, competitive and other considerations, a nondominant carrier's total charge for a given service may vary considerably. The ultimate charge may comprise a combination of many different rates specified in the carrier's tariff, even if the tariff lists specific rates (i.e., for features, term, etc.) of the desired service or services. Therefore, the totality of the

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[12] See, e.g., NLRB v. Bell Aerospace Co., 416 U.S. 267, 274-75 (1974); McCaughn v. Hershey Chocolate Co., 283 U.S. 488, 492 (1931).

[13] Order at ¶ 34.

rates reflected in the tariff simply comprise a range of rates that could apply to a given customer's service. Those rates constitute the equivalent of a formal rate range and are as informative to a customer as a rate range.

Furthermore, even the existence of specific tariff rates, rather than a range of rates, does not necessarily inform the customer of the charges it will incur. Since customers have the ability to negotiate rates with nondominant carriers, it is entirely possible that a rate so negotiated would not be listed among the specific rates reflected in the carrier's tariff, although it might well fall within the range of rates so listed.

For these reasons, as the Commission noted, the only difference between the above two methods of presenting tariff rates is that, with a formal range of rates on file, nondominant carriers would not have to file numerous minor revisions to constituent rate components. (In the case of a major rate change that establishes a new upward or lower rate limit, a nondominant carrier, of course, would have to file a tariff change under either tariffing method.)

In sum, from the standpoint of providing information to the public about a carrier's rates -- which is the purpose underlying Section 203 -- the listing of a range of rates should be as useful to consumers as the listing of specific rates that may not be applicable at all, or applicable only as an indication of a range of possible rates. For this

reason, AT&T is wrong in asserting that the filing a range of rates does not satisfy the statutory purposes of Section 203.

The Commission also was correct in stating that its conclusion is buttressed by Section 203(b) which permits the Commission to modify the requirements of Section 203(a).[14] AT&T (at 9) takes issue with that holding, claiming that "[t]he D.C. Circuit has reversed three prior Commission orders in which the agency asserted that Section 203(b) authorizes it to eliminate the filed rate doctrine." In fact, in the cases cited by AT&T, the Court found that the Commission's action constituted the elimination, not the modification, of the form in which tariff information is presented. The Commission took those cases into account in the Order, observing that what was now at issue was the modification of tariff information requirements, not elimination of the tariff filing requirement itself. Citing the Enlarged Notice decision's conclusion that Section 203(b) "permits the Commission to 'modify requirements as to the . . . information contained in, tariffs . . . ',"[15] the Commission correctly concluded that the cases now cited by AT&T were not on point.

In any event, to the extent that the tariff filing requirement is intended to enable the Commission to enforce

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[14] Order at ¶ 35.

[15] Id.

the nondiscrimination requirement of Section 202(a) of the Act, its purpose is satisfied by the Commission's decision. A nondominant carrier would have the same obligation to comply with Section 202(a) of the Act in providing service under a tariff that specifies a range of rates as it would in providing service under a tariff that specified the constituent rates that comprise the range. It would have the same statutory obligation to provide all similarly situated customers the same rate for the same service irrespective of whether the rate is within a range or is identified in the tariff. Accordingly, the plain language of Section 203, its purposes, and the purposes of Section 202(a) are satisfied by the Commission's decision especially since the complaint-filing rights accorded under Sections 206-209 of the Act are not affected by the Order.

AT&T contends that the D.C. Circuit's decision in Regular Common Carrier Conference v. United States, 793 F.2d 376, 380 (D.C. Cir. 1986), "establishes beyond doubt that the modification power does not extend to authorizing range tariffs."[16] However, the modification authority which was at issue in that case is the authority granted to the ICC by the Interstate Commerce Act, not the modification authority granted to the Commission by Section 203(b) of the Communications Act. AT&T therefore is forced to argue once again, as it did previously in the instant proceeding, that

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[16] Application at 9.

the Commission's modification authority under Section 203(b) is as limited as the ICC's modification authority under analogous provisions of the ICA. AT&T's argument is devoid of merit.

In its Order, the Commission correctly concluded that the Communications Act allows it broader modification authority than the ICA allows the ICC, explaining that "the fundamental statutory structures of the ICA and the Communications Act differ in significant respects."[17] Moreover, the Commission correctly observed that the courts have held that "the FCC should not be restrict[ed] . . . to a course of action that has been dictated by the requirements of the transportation industry."[18]

Moreover, as the Commission pointed out: "The motor carrier analogues to Sections 203(a) and (c) are contained in separate sections of the ICA -- 49 U.S.C. §§ 10762(a)(1) and 10761(a) . . . . [and] [t]he motor carrier analog to Section 203(b), which provides modification authority, appears in ICA Section 10762(d)(1) and expressly applies only to the "'requirements of this section [10762].'"[19] Indeed, in Regular Common Carrier Conference, the D.C. Circuit noted that "[t]he section to which . . . [10762(d)(1)] applies is § 10762, entitled "General tariff

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[17] Id. at ¶ 36.

[18] Id.

[19] Id.

requirements," setting forth details concerning the contents, manner of filing, publication and alteration of common carrier tariffs."[20] Therefore, the Commission correctly concluded that the ICC's modification authority (which derives from Section 10762(d)(1)) is more limited than the Commission's tariff modification authority.

AT&T contends that any difference between the modification authority in the two statutes regarding Section 203(c) and its ICA analog is "irrelevant." It argues that what is at issue here is the power to modify the Section 203(a) filing requirement. AT&T also argues that, in any event, the ICA's tariff modification provisions originally were contained in the same section of the ICA but were subsequently separated as a result of the recodification of the ICA.[21]

Regardless of the genesis of various ICA provisions or their interrelationship, the fact remains that the interpretation of those provisions is not determinative of the meaning of similar provisions in the Communications Act. As the Commission correctly observed, the Courts have recognized that the Commission's authority under Section 203 is not a mirror image of the ICC's authority. In Enlarged Notice, the Court concluded that it is "clear that the congressional intent was not to provide a carbon copy of the

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[20] 793 F.2d at 379.

[21] Application at 10.

Interstate Commerce Act."[22] Consequently, the Court specifically rejected AT&T's contention -- which it now makes again -- that Section 203 of the Act conferred no greater power on the Commission to modify tariff filing requirements than the power conferred on the ICC by the similar provision of the ICA.

In its Special Permission decision, the Second Circuit confirmed that the Commission has the express authority under Section 203(b) to "modify the requirements as to the . . . information contained in, tariffs . . . ."[23] The Commission's decision to allow nondominant carriers to file ranges of rates constitutes precisely the kind of modification to the requirements of Section 203 encompassed by the Court's reasoning.

Accordingly, the Commission, entitled as it is to substantial deference in interpreting its governing statute, correctly concluded that Section 203 permits it to authorize carriers to file tariffs stating reasonable ranges of rates. AT&T thus has not demonstrated that it is likely to prevail on the merits of its appeal and it therefore has failed to satisfy the first prong of the test for issuing a stay.

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[22] 503 F.2d at 616.

[23] 487 F.2d at 879.

B. AT&T Will Not Be Irreparably Harmed In The Absence Of A Stay

The second prong of the test for issuing a stay is whether the petitioner has demonstrated that it will suffer irreparable harm if the stay is not granted. To demonstrate irreparable harm, a petitioner must show a strong likelihood that the injury will occur: "the injury must be both certain and great; it must be actual and not theoretical. . . . [T]he party seeking injunctive relief must show that '[t]he injury complained of [is] of such imminence that there is a "clear and present" need for equitable relief to prevent irreparable harm.'" Wisconsin Gas Co. v. Federal Energy Regulatory Com'n, 758 F.2d 669, 674 (D.C. Cir. 1985) (quoting Ashland Oil Inc. v. FTC, 409 F. Supp. 297, 307 (D.D.C.), aff'd, 548 F.2d 977 (D.C. Cir. 1976)) (emphasis in original).

In order to satisfy the requirements of irreparable harm, a petitioner must show more than the potential for economic injury. Indeed, "[i]t is . . . well settled that economic loss does not, in and of itself, constitute irreparable harm." Wisconsin Gas, 758 F.2d at 674. Instead, a petitioner must show, in effect, that the viability of its very business would be placed in jeopardy. See Holiday Tours, 559 F.2d at 843 and n.2.

AT&T has clearly failed to demonstrate that it would be

irreparably harmed in the absence of a stay.[24] The injury AT&T claims it is suffering is unproven in the extreme, obviously only "theoretical" and is not "imminent." Certainly the "viability" of AT&T's business would not be jeopardized in the absence of a stay.

AT&T attaches a seven-page Declaration to its Application in support if its claim that it will be irreparably injured. However, only one paragraph of that Declaration (¶ 11) deals with that issue. And even that paragraph does so in a general, conclusory fashion, which does not adequately support a finding of irreparable injury.

AT&T claims it would be injured because it would be required to file specific rates while its nondominant carrier competitors would be allowed to file ranges of rates. As a result, AT&T argues, it would be placed at a severe competitive disadvantage because it would not be able to ascertain its competitors' prices; and yet they would be able to match or undercut AT&T's specific prices.[25] The reality is that AT&T would not suffer any such injury.

In a competitive bid situation, it would be no more beneficial to AT&T if its competitors' tariffs set forth specific rates than a reasonable range of rates. In both cases, AT&T would not know the actual, specific rates that

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[24] See Application at 12-17.

[25] Id. at 12-13, Declaration of Howard McNally at ¶ 11.

its competitor might be proposing to charge because the competitor, like AT&T, could propose different rates for that customer than any contained in its current tariff. If AT&T won the bid, it would file an after-the-fact contract-tariff or other tariff with the Commission reflecting that fact.[26] If AT&T's non-dominant competitor won the bid, it would file a similar after-the-fact tariff if the negotiated rate fell outside the specified range of rates set forth in its tariff.

Moreover, even assuming arguendo that AT&T would suffer the injury it alleges as a result of the Commission's Order, that injury certainly would not be "irreparable" as AT&T claims. AT&T contends that its competitors did not file the kind of tariffs AT&T wished they had filed in light of the Court's decision in AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992), and argues that this demonstrates that its injury would be irreparable in the absence of a stay.[27] AT&T's argument is completely baseless.

The lawfulness and effect of the tariffs that non-dominant carriers filed in response to the decision in AT&T v. FCC is immaterial to the issue of whether AT&T would be irreparably injured by the Commission's decision. Moreover, AT&T's failure to challenge those tariffs before the

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[26] To date, AT&T has filed nearly 500 contract-tariffs and over 140 different Tariff 12 Options which it frequently modifies.

[27] Application at 13-14.

Commission (other than its clumsy challenge to the tariff filed by MCI which the Commission denied[28]), demonstrates that AT&T truly does not believe that its interests are or would be seriously threatened by those tariffs.[29]

Nor would AT&T be "irreparably injured" as it claims if MCI, like other nondominant carriers, filed ranges of rates,[30] provided the District Court grants MCI's Motion to vacate the Preliminary Injunction pursuant to which MCI has filed non-range rate tariffs. Indeed, in making this argument, AT&T candidly admits that its real motivation in seeking a stay is to "preclude any possibility that the preliminary injunction [against MCI] will be vacated."[31]

MCI is the only nondominant carrier currently required to file non-range rate tariffs, despite the Commission's well-grounded decision to no longer require such tariffs of

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[28] MCI Telecommunications Corp., DA 93-969, rel. July 29, 1993.

[29] AT&T's attempts (at 14) to describe its alleged irreparable injury border on the incomprehensible. It asserts that because its competitors did not file the types of tariffs it wanted them to file, they "necessarily must have believed that the existence of a Commission rule means they will obtain greater benefits from violating rate-filing requirements than AT&T would be able to recover in damages: i.e., that they can inflict irreparable harm on AT&T." First, AT&T's efforts to read its competitors' minds fall short of the empirical evidence needed to support a showing of irreparable harm. Second, even if AT&T's paranoia had a basis in fact (which it does not), its "benefits-damages" calculation does not amount to irreparable harm, incapable of being recovered in damages.

[30] See Application at 16-17.

[31] Id. at 17.

nondominant carriers, since they lack the ability to engage in unlawful conduct in the furnishing of their services. AT&T simply is seeking to perpetuate this unfair result. Its right to a stay herein should be considered on its own merits and without reference to any alleged collateral benefits to AT&T in its court litigation against MCI.

AT&T's legal basis for its irreparable injury claim is as tenuous as its factual basis. It concedes that it is unable to quantify its allegations of irreparable injury and that the actual extent of its "injury" is not ascertainable.[32] Therefore, it asserts that such uncertainty in the measurement of damages constitutes irreparable harm, citing Vogel v. American Society of Appraisers, 744 F.2d 598 (7th Cir. 1984).

Putting aside the fact that AT&T's argument amounts to a convenient tautology for a party unable to demonstrate irreparable harm in support of a stay request, Vogel is inapposite. In Vogel, the Seventh Circuit did not hold that the irreparable harm test is satisfied whenever any uncertainty in measuring damages exists. Rather, it held that the particular plaintiff therein, who was seeking reinstatement into an appraisers' society, would be irreparably harmed by continued exclusion from the group and, therefore, it was unlikely it could be made whole by an

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[32] Id. at 15.

eventual award of damages or other relief.[33]

In the instant case, to prove irreparable harm, AT&T similarly must show that it could not be made whole by a damages award. However, since AT&T's claim here rests on lost potential business opportunities, AT&T's argument that its "injury" will be uncertain (as was the case under the special circumstances of the Vogel case) will not suffice to demonstrate irreparable inquiry.

By any measure, AT&T would not suffer any injury -- and certainly not irreparable injury -- if the Commission does not stay its Order. Indeed, in the decade during which AT&T's competitors were not required to file any tariffs -- under the Commission's forbearance rule -- AT&T's business was not jeopardized to any degree by its competitors' actions. Accordingly, if the Order is not stayed, any hypothetical AT&T injury would not be "certain and great," AT&T's massive business enterprise obviously would not be placed in jeopardy and, in any event, any economic loss to AT&T cannot, as a matter of law, be equated with irreparable injury. For these reasons, AT&T's claim of irreparable injury is without merit. Therefore, AT&T has failed to satisfy the second prong of the test for obtaining a stay of the Order.

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[33] 744 F.2d at 599.

C. Other Carriers Will Be Harmed If The Commission Stays Its Order

To obtain a stay of the Commission's Order, AT&T must also demonstrate that other parties will not be harmed by the grant of a stay. AT&T has made no such showing, nor can it. As the Commission found, the filing of rate-specific tariffs requires that nondominant carriers incur substantial "tariff revision costs and the concomitant administrative burdens" of preparing and filing "new rate schedules for each minor tariff revision."[34] In addition, the Commission implicitly found that tariffs that do not provide for a range of rates inhibit nondominant carriers from responding immediately to changes in marketplace conditions which, in turn, is contrary to the best interests of consumers.

The Commission's finding that it is unnecessary to subject nondominant carriers to these costs and burdens is particularly well-founded in light of the Commission's long-established finding that nondominant carriers lack market power or the ability to engage in unlawful practices. Accordingly, staying the Order will in fact harm nondominant carriers without providing any corresponding public interest benefit. AT&T, therefore, has failed to satisfy the third prong of the test for a stay.

D. The Issuance Of A Stay Is Not In The Public Interest

The final prong of the test to determine whether to

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[34] Order at ¶ 32.